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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,691	03/22/2004	Neil Tilbor	204-3 (CIP-CON-II)	8740

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EXAMINER

RICCI, JOHN A

ART UNIT PAPER NUMBER

3711

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

5r

<b>Office Action Summary</b>	<b>Application No.</b> 10/805,691	<b>Applicant(s)</b> TILBOR ET AL.	
	<b>Examiner</b> John Ricci	<b>Art Unit</b> 3711	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,482,069 in view of Suto et al 5,709,583.

Patent 6482069 claims a radio controlled two wheeled toy vehicle, including a body with a front wheel fork, front and rear wheels, steering mechanism 70, drive system 30, and a gyro stability system including flywheel 66, independent from the drive system and steering mechanism. However, the patent does not claim a stabilizer extending from the body, so the vehicle may tip over at low speeds. One would recognize that a stabilizer would be desirable. For example, Suto shows that a toy two wheeled vehicle may include stabilizers 20 (figures 9-12) to keep the vehicle from tipping over. This would increase the play value of the toy. It would have been obvious to one of ordinary skill in the art to provide the vehicle of Patent 6482069 with the stabilizers shown by Suto.

\* \* \* \* \*

Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-22 of U.S. Patent No. 6,682,394 in view of Suto et al 5,709,583.

Patent 6682394 claims a radio controlled two wheeled toy vehicle, including a body with a front wheel fork, front and rear wheels, steering mechanism 70, drive system

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30, and a gyro stability system including flywheel 66, independent from the drive system and steering mechanism. However, the patent does not claim a stabilizer extending from the body, so the vehicle may tip over at low speeds. One would recognize that a stabilizer would be desirable. For example, Suto shows that a toy two wheeled vehicle may include stabilizers 20 (figures 9-12) to keep the vehicle from tipping over. This would increase the play value of the toy. It would have been obvious to one of ordinary skill in the art to provide the vehicle of Patent 6682394 with the stabilizers shown by Suto.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

\* \* \* \* \*

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Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no antecedent for the "seat tube" or "crankshaft portion".

\* \* \* \* \*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, & 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hair 5,820,439 in view of Suto et al 5,709,583.

Hair shows a radio controlled two wheeled toy vehicle, including a body with a front wheel fork, front and rear wheels, steering mechanism 70, drive system 30, and a gyro stability system including flywheel 66, independent from the drive system and steering mechanism. However, there does not appear to be any stabilizer extending from the body, so the vehicle may tip over at low speeds. One would

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recognize that a stabilizer would be desirable. For example, Suto shows that a toy two wheeled vehicle may include stabilizers 20 (figures 9-12) to keep the vehicle from tipping over. This would increase the play value of the toy. It would have been obvious to one of ordinary skill in the art to provide the vehicle of Hair with the stabilizers shown by Suto.

Claims 10 & 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hair in view of Suto as applied to claim 1 above, and further in view of Martin 560,103.

The vehicle of Hair does not include an action figure. One would recognize that an action figure would increase the play value of the toy. For example, Martin shows that a toy two wheeled vehicle may include an action figure. It would have been obvious to one of ordinary skill in the art to include such action figure with the vehicle of Hair.

\* \* \* \* \*

This letter was prepared by Examiner John Ricci, who can be reached at:

Voice: 571-272-4429

Fax: Use 571-273-8300 for papers to be delivered directly to the mail room, like formal amendments and responses, change of address, power of attorney, petitions.

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Use 703-783-0439 for papers to be delivered directly to the Examiner, like informal or proposed responses for discussion, or notes in preparation for an interview.

*Response by Fax is encouraged to reduce mail processing time. Please don't send duplicate papers by mail and Fax.*

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**JOHN RICCI  
PRIMARY EXAMINER  
ART UNIT 3711**